

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an Administrative Law Judge shall be subject to review by the Appeals Board upon timely written request of any interested party. See K.S.A. 44-551, as amended by S.B. 59 (1995).

The Administrative Law Judge initially entered an award in this proceeding on August 5, 1994, and ordered payment of 18.43 weeks of temporary total disability benefits at \$289.00 per week and 396.57 weeks of permanent partial disability benefits at \$168.09 per week. The Award did not mention 87 weeks of temporary total respondent paid during a vocational rehabilitation program. Apparently, the parties advised the Administrative Law Judge she had omitted addressing the 87 weeks of temporary total disability benefits, and the judge subsequently entered an Order dated December 21, 1994, wherein she again ordered payment of the same number of weeks of temporary total and permanent partial disability benefits as contained in the initial award. In this Order, the Administrative Law Judge provided that respondent was entitled credit for payment of 87 weeks of temporary total benefits, but credit was limited to the permanent partial rate of \$168.09 per week with the Workers Compensation Fund ordered to reimburse respondent the difference between the credit and total amount paid for the 87 week period, or the sum of \$8,953.17.

Because this matter comes to us without the benefit of a transcript and the Order fails to reveal the reasoning of the Administrative Law Judge, we do not know if the Order was intended to correct a clerical error, whether the Judge was considering new matters not in issue at the time of the initial award, or whether the Order is a combination of the two. Should the Order be intended as a Nunc Pro Tunc it may only correct clerical errors. Because the appeal time has expired for the initial award, the findings of the Administrative Law Judge in that document are final and res judicata, except those that may be modified due to clerical error. Therefore, in the absence of clerical error, neither the Administrative Law Judge nor the Appeals Board can modify the liability of the Workers Compensation Fund under the theory of pre-existing impairment or modify the date of accident as set forth in the Award of August 5, 1994. Should, however, the Order be intended to address matters not in issue at the time of the initial award, the Order is not a Nunc Pro Tunc and the proceeding is a post-award proceeding during which any issue properly before the Administrative Law Judge may be addressed.

Because entirely different issues may be involved depending upon whether the Order of December 21, 1994, is or is not an Order Nunc Pro Tunc and it is not possible to make this determination, this case should be remanded to the Administrative Law Judge for specific findings. If the Administrative Law Judge intends the Order to be Nunc Pro Tunc, the Administrative Law Judge should specify the clerical error that was made and the appropriate correction. If the Order is not intended to correct a clerical error, the Administrative Law Judge should identify the issues adjudicated, the findings pertaining to those issues, and the final orders and decision. If both clerical errors and new issues exist, the Administrative Law Judge should address those matters in separate orders.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding be remanded to the Administrative Law Judge for specific findings and order in conformance with this decision. The Appeals Board does not retain jurisdiction over this review and the parties are required to timely file Application for Review in the event they are aggrieved by the order of the Administrative Law Judge that is issued as a result of this remand.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas Hammond, Wichita, KS
Frederick Haag, Wichita, KS
John Nodgaard, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director